

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona
May 23, 2007
9:00 a.m.

Location: 1110 W. Washington
Room 250
Phoenix, Arizona

REPORTED BY:
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20	TO BE HELD ON JUNE 27, 2007 AT 9:00 A.M.	
	IN ROOM 250 AT ADEQ LOCATED AT 1110	
21	WEST WASHINGTON, PHOENIX, ARIZONA	
22	13. ADJOURN	41

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1 COMMITTEE MEMBERS PRESENT:

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3 Gail Clement, Chair

4 Joseph Mikitish

5 Michael O'Hara

6 Philip McNeely

7 Theresa Foster

8 Jon Findley

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1 P R O C E E D I N G S

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3 CHAIRPERSON CLEMENT: Let's get the meeting
4 started. This is the May 23rd UST, Underground Storage
5 Tank Policy Commission meeting. We do have a quorum.

6 This is the call to order and I will begin the
7 roll call with Mr. -- I say that wrong continually.

8 MR. MIKITISH: Mikitish.

9 CHAIRPERSON CLEMENT: Thank you.

10 MR. MIKITISH: Joe Mikitish.

11 MS. MC NEELY: Phil McNeely.

12 MR. O'HARA: Mike O'Hara.

13 CHAIRPERSON CLEMENT: Gail Clement.

14 MS. FOSTER: Theresa Foster.

15 MR. FINDLEY: Jon Findley.

16 CHAIRPERSON CLEMENT: Welcome everybody. Glad
17 you're here. Welcome to the audience. We're glad you are
18 here, too.

19 Did everybody have a chance to read their packets
20 and to receive all the materials that came out? I didn't
21 get the meeting minutes. Did I miss that? I must have
22 missed it.

23 MR. KERN: They were in the e-mail.

24 CHAIRPERSON CLEMENT: I didn't get it, so I
25 apologize.

1 Did other people receive it and have a chance to
2 review them? Otherwise, I'm just going to ask if we've
3 all had a chance to review them.

4 You have?

5 MR. O'HARA: I have them.

6 CHAIRPERSON CLEMENT: Mr. Findley? No.

7 Okay. Let's just move this agenda item to the
8 next agenda, perhaps, and then give everybody a chance to
9 review those meeting minutes before we discuss them.

10 Okay. The next agenda item is the discussion of
11 rules affecting the UST program, and Mr. McNeely is going
12 to talk about that. And then we're also going to cover
13 the -- we could just do it all at once. We'll cover those
14 under the Technical Subcommittee, also, but we will have
15 it all on the one agenda item.

16 MR. MC NEELY: Okay. Do you want me to wait for
17 the --

18 CHAIRPERSON CLEMENT: No, you can start, please.
19 Sorry.

20 MR. MC NEELY: Rules affecting the program. I
21 will add something else that we do have under the other
22 category. We are all working on the control and
23 contaminated soil special waste rules. UST is exempt from
24 that if you are actually doing UST cleanup, but it's just
25 sort of related. We're working on that this summer.

1 Waste program is in the Lead Division, but I'm just
2 helping to make sure that it's consistent with what we do
3 with petroleum and make sure that we are still exempt.

4 No further action on the Natural Attenuation
5 Rule. We will talk about that in the Technical
6 Subcommittee, but once -- the process, once we get through
7 the vote today, and if you approve the letter that you are
8 proposing to send, we will have that out for public
9 comment probably in July. I mean, I think we're really
10 very close to putting that out for public comment, which
11 means we will probably give them a 45-day public comment
12 period, a couple of public hearings, and then we are
13 hoping we can have that to -- this fall to the Governor's
14 Regulatory Review Counsel, which means that it would be
15 60 days after that, so it could be as early as next
16 January effective date.

17 I will just go right on into the UST program
18 update.

19 CHAIRPERSON CLEMENT: Great. Thank you.

20 MR. MC NEELY: One thing we want to start this
21 summer is the Energy Act that was passed a couple of years
22 ago, and there are new provisions in the federal law that
23 the State implemented.

24 Three of them that require statutory changes are
25 delivery prohibition, secondary containment requirements

1 related to a well or even any piping that actually carries
2 water, so basically every site has to be secondarily
3 contained.

4 Then operator training. There is a requirement
5 to have three different levels of operator training for a
6 person on the station and the actual person in charge of
7 everything, and then the middle manager type person.

8 So these things require statutory changes, and
9 we'd like to start having stakeholder groups probably
10 starting in June, late June, early July time frame just to
11 talk about what the stakeholders would like, put some
12 legislative proposals together and see where that goes.
13 Because what we're thinking is that we will get some
14 legislative authority to do this, then we'll probably
15 implement this rule, the actual details, so it will take
16 us a year to get it -- at the very minimum a year to get
17 it through the legislation if it passes the first time
18 through, and then it will probably take us another year or
19 so to actually write rules to implement.

20 Part of the problem is, a couple of these things
21 have already passed. The delivery prohibition, that was
22 February of this year, was the requirements for the
23 federal law. So, what the feds are saying, you know, they
24 give us grants every year, about a million dollars in
25 LUSTs and about 300,000 in USTs. So part of the condition

1 to get that grant money is that we have to say that we are
2 really going to try to implement this federal law.

3 So, we are telling them we're going to try, but
4 it's a legislative process that we have to go through.

5 CHAIRPERSON CLEMENT: From your perspective, from
6 the Agency's perspective, besides the LUST/UST grant money
7 that you need, are you supporting this from a policy
8 perspective? Do you think these are good elements to
9 include in the State program?

10 MR. MC NEELY: Well, it depends on the detail.
11 The thing is the delivery prohibition, if we really make
12 it, if you tailor it for your state, what violation would
13 require delivery prohibition. I think that's as
14 stakeholders we have to decide, and as an agency, and
15 probably as the legislature, too, decide what level of
16 violation would trigger that prohibition, and we're
17 thinking it would have to be really pretty severe, where
18 if you put fuel into your tank system, you are going to
19 leak, it would have to be a pretty severe thing.

20 CHAIRPERSON CLEMENT: Not as prohibitive if it
21 comes from the outside, it's prohibitive as you are going
22 to be --

23 MR. MC NEELY: Yeah, a real problem. That is the
24 type of stuff we need to talk about. California has had
25 it. Other states have had it. They rarely use it. They

1 only use it really when it's a recalcitrant person who is
2 really going to cause problems. So that's the type of
3 thing we need to talk about.

4 I think the operator training, that can't be a
5 bad thing to train operators, really. That's part of what
6 we do when we do inspections. We go out and a lot of our
7 inspectors are really compliance assistants. But this
8 makes it an annual requirement.

9 We have 2,600 owner/operators. If we have to do
10 it every year, and then if you have two or three or five
11 people that you have to train per facility, you are
12 talking about 10,000 people getting trained every year and
13 keep track of it. So that's a --

14 CHAIRPERSON CLEMENT: That's a big
15 responsibility.

16 MR. MC NEELY: So we are hoping it would be some
17 type of Internet thing or self-certification, something
18 that that we could track. So, it could be really a very
19 onerous program, or it could be less, and we are going to
20 have to get with stakeholders in other states and figure
21 out how they are doing it.

22 The operator training requirement doesn't come
23 into play for a few years out, but the secondary
24 containment delivery prohibition are right here. And it's
25 the secondary containment, we didn't check our records.

1 Most the tanks going in the ground today over the last
2 year are secondary. They are contained already.

3 CHAIRPERSON CLEMENT: Would you phase in a
4 requirement for secondary containment if we had one?

5 MR. MC NEELY: I think that would all depend on
6 the statute and the rule that we pass. That's what we
7 need to talk about. I think it would be probably be a
8 good idea.

9 CHAIRPERSON CLEMENT: Is there any financial
10 opportunity -- there used to be a loan program and a grant
11 program. Are there any financial opportunities for people
12 with less funds available to upgrade to secondary
13 containment?

14 MR. MC NEELY: No, there isn't, and that grant
15 funding program, that was like 2001, and that actually
16 went away, and that's where the municipal tank closure
17 program money came from.

18 CHAIRPERSON CLEMENT: Okay.

19 MR. MC NEELY: I lost my train of thought, but
20 it's not -- you don't have to get secondary contained if
21 you are an operating system already. New ones going in or
22 if you do upgrades to your lines, and that's what we have
23 to talk about in our rules, how much of an upgrade. If
24 you change a foot of a line, you have to change all of
25 your lines, or, I mean, that's the tough thing we need to

1 talk about. They have guidance out there from the federal
2 level, but we need to talk at a state level, what does our
3 requirement exactly mean.

4 CHAIRPERSON CLEMENT: But there's always those
5 issues relative to the owners and operators. What about
6 your funding, will you need additional funding to run the
7 program either from EPA or from the State itself?

8 MR. MC NEELY: That's the issue. Right now the
9 states, almost all 50 states are saying the same thing.
10 This is a nonfunded mandate, how are we supposed to do
11 this. The program has been around since 1986, and all of
12 a sudden you are adding all these new requirements. So
13 that the federal government is trying to give extra money,
14 a few hundred thousand dollars to help develop these
15 programs, but really there is no long-term -- you get
16 annual grants. Sometimes they will be biannual grants,
17 two-year grants, but after that it depends on what
18 Congress does. So, really, there is no commitment,
19 actually, to fund the program.

20 So it comes down to the State will have to have
21 more funding. We have to do three-year inspections, which
22 currently -- history of the program, we've been probably
23 doing it maybe four years, three to four years, depending
24 on our staffing, but now we have to do it every three
25 years. Our database needs, our requests, however many

1 tanks, so there is more resource needs. And the training
2 program is what really scares me. That could be -- the
3 minimum, it would be a few people trying to track
4 10,000 --

5 CHAIRPERSON CLEMENT: 10,000 people.

6 MR. MC NEELY: -- in developing, actually testing
7 and looking at requirements. So, there going to be more
8 needs and that is why I think part of this is through the
9 summertime, the stakeholder group, I think we need to look
10 at that maybe at the same time to go through the
11 legislature.

12 CHAIRPERSON CLEMENT: Your stakeholder group,
13 have you defined the participants, because there is a
14 Commission, and many of the Commission members might also
15 be considered stakeholders, how are you going to manage
16 that?

17 MR. MC NEELY: I think it's going to be the same
18 issue with the MNA rule, probably post it as a UST Policy
19 Commission meeting/stakeholder meeting, then if Policy
20 Commission members don't show up, it's okay, it's not a
21 Policy Commission meeting, it's just a stakeholder
22 meeting.

23 CHAIRPERSON CLEMENT: If we have enough notice,
24 or whoever can get the information out and maybe work
25 together a little more closely.

1 MR. MC NEELY: Ron Kern will be the point person
2 on this one, so we are going to be probably coming up with
3 a schedule and try to develop the stakeholders. I want it
4 to be an open meeting, too, not just invite certain
5 people. I would like everyone to show. The more the
6 better, personally. I think it would be better to have
7 true owner/operators there, rather than just, you know,
8 consultants, because they're the ones that really have to
9 implement the day-to-day compliance stuff.

10 CHAIRPERSON CLEMENT: And they should be aware of
11 what's coming down in the future. Thank you.

12 MR. MC NEELY: You are welcome. I think that's
13 it for the program update.

14 CHAIRPERSON CLEMENT: Any other questions or
15 comments from Mr. McNeely? No?

16 Let's move, then, to the corrective action
17 monthly update with Mr. Drosendahl.

18 MR. DROSENDAHL: I'm Joe Drosendahl, the manager
19 of the Corrective Action Section.

20 In your packet, you have all the numbers for the
21 Corrective Action Section. To date we've closed
22 84 percent of all reported LUSTs. That seems to be slowly
23 creeping up still. Right now we only have 21 reports
24 in-house that are requiring a review. That's been staying
25 pretty constant over the last year or so.

1 And we have the data on the municipal tank
2 closure program. That's moving forward. We've removed
3 119 tanks from the ground to date.

4 We're working, still working on the Route 66
5 Initiative, and as Phil McNeely said, we're still working
6 on the NFA/MNA Rule.

7 There is no new information on the Tier II
8 software. Hopefully next meeting I will have some more
9 news on that.

10 We haven't lost or gained any people over the
11 last month, so that's good. And that's all I have to
12 report.

13 CHAIRPERSON CLEMENT: I just have one question.
14 You started with, it's slowly creeping back up the number
15 of open versus closed UST sites?

16 MR. DROSENDAHL: No. The number of closed sites
17 is creeping up.

18 CHAIRPERSON CLEMENT: Okay. That's what I
19 thought you were trying to get to. I misunderstood.
20 Thank you.

21 MR. DROSENDAHL: You are welcome.

22 CHAIRPERSON CLEMENT: Any other comments or
23 questions?

24 Let's go on to the -- we don't have any risk
25 assessment and Tier II modeling update.

1 Okay. The SAF monthly update with Mr. McNeely.

2 MR. MC NEELY: The SAF monthly update. July is
3 coming around again, and every year we do the
4 cost-of-living increase for July, so this year, based on
5 the Bureau of Labor & Statistics Producer Price Index,
6 Finished Goods, Less Food and Energy Not Seasonally
7 Adjusted Index -- I'm sure you didn't get that.

8 CHAIRPERSON CLEMENT: Say that again slowly.

9 MR. MC NEELY: It's a 1.5 increase that's based
10 on the Annual Bureau of Labor & Statistics Producer Price
11 Index for Finished Goods, Less Food and Energy Not
12 Seasonally Adjusted Index, so we're increasing all the
13 cost schedules across the board by 1.5 percent. It will
14 be effective July 1st. We're not adding any new language.
15 We're not adding any new cost schedules. We're just doing
16 our annual adjustment to 1.5 percent. So you will see --
17 it will round up, it's over a dollar round up. We don't
18 have pennies in there, so to the next dollar.

19 CHAIRPERSON CLEMENT: That will be July 1st when
20 that becomes effective?

21 MR. MC NEELY: July 1st, right.

22 CHAIRPERSON CLEMENT: And that will apply to any
23 work performed after July 1st?

24 MR. MC NEELY: No. It actually applies -- I
25 believe the way Senate Bill 1310 ended it was -- when the

1 application is received, it will be the new cost schedule
2 because we didn't want to have multiple cost schedules, so
3 this will be an extra \$2, or something, whatever the 1.5
4 percent is.

5 CHAIRPERSON CLEMENT: Thank you.

6 MR. MC NEELY: If you pull out your graph, the
7 colored ones for SAF, you see in April -- April was the
8 first time that we actually received more applications
9 than we reviewed in a long time. We received 96
10 applications and reviewed 91, but it was close.

11 But if you look at the total numbers beneath
12 that, we have total active applications, 217, 15 over 90
13 days, 22 less than 90 days, so still we are doing okay
14 with that.

15 Then the appeals, turn to the next page, we've
16 had 28 in April informal appeals and we made 29 informal
17 determinations in April. In April, for formal appeal
18 requests, we had 14 and we only made 7 determinations, so
19 that's going the wrong direction. So we have 7 more
20 requests for formal appeals than we actually made
21 determinations.

22 But in general, we've been keeping up pretty
23 well, and we're paying out -- I don't have those actual
24 numbers, but I think this may be our record year for
25 actual payouts, which is a good sign. We want work to be

1 happening. So we're having less and less LUST numbers,
2 open sites, but we're paying out more, which means a lot
3 of work is being done on these sites that we actually have
4 open.

5 CHAIRPERSON CLEMENT: Good.

6 MR. MC NEELY: That's all I have for the SAF
7 update.

8 CHAIRPERSON CLEMENT: Is there any reason that
9 the trends are going differently on your appeals as far as
10 the formal appeals?

11 MR. MC NEELY: I have no idea why that happens.
12 It seems like it goes in cycles up and down. We haven't
13 changed anything. We haven't really been notified or
14 noticed anything that is happening that is causing more
15 formal appeals or less.

16 CHAIRPERSON CLEMENT: Thank you.

17 Any more comments, questions of Mr. McNeely?

18 Okay. We do an efficient meeting. There is no
19 wait.

20 Financial Subcommittee update. This is very
21 quick. Andrea Martincic is not here. There was no
22 Financial Subcommittee meeting, so there is nothing to
23 report. That's very easy.

24 The Technical Subcommittee update. Mr. Gill was
25 planning on being here. He had some last minute things.

1 He called me last night, actually, and was not able to
2 make it here, so Phil McNeely and myself participated, and
3 I'd be happy to share with everyone the report out, if
4 that would be okay with you, unless you want to do it.

5 Okay. We did have -- in light of the fact that
6 there will be requirements for all subcommittees in
7 addition to commissions to have official meeting minutes,
8 I did official meeting minutes for that subcommittee.

9 There were three commission members present. It
10 was Mr. McNeely, myself and Mr. Gill. We had -- I thought
11 it was a very open and interesting discussion.
12 Personally, I thought it was a good use of our time.

13 The two main areas that we talked about were the
14 -- well, three areas, the No Further Action and Monitored
15 Natural Attenuation Rule, and then the need for further
16 characterization of older sites, and then the Tier II risk
17 screens versus evaluation issues.

18 And so there is two pages of meeting minutes, and
19 that was in your packet, and I also sent them out
20 individually to everyone, so you should have gotten them.
21 Let's do the rule last because that's actually some action
22 that we are hoping to take today.

23 There is quite a nice discussion about, if you
24 have an older site that hasn't had recent work performed
25 on it and you are in the process of implementing the next

1 phase, particularly a high-end next phase, such as
2 remedial action or corrective action phase, and if there
3 is uncertainty about the current status of the site
4 relative to its characterization, and you are not sure
5 whether additional sampling will be necessary or not, it
6 is advisable to request a facility meeting and clarify
7 what the agency requirements are going to be and what your
8 recommendations would be relative to further
9 characterization.

10 So that was agreed upon during our meeting, that
11 there would be a notice placed on the TPD bulletin board.
12 We have language that will be placed on the TPD bulletin
13 board that came in our packet. I haven't seen that yet.

14 And that language is, quote, "Before submitting a
15 corrective action plan or a remediation pre-approval work
16 plan to ADEQ, it may be reasonable and cost effective to
17 collect additional soil and/or groundwater samples if the
18 last analytical results are not current and may not
19 reflect current site conditions. A facility meeting can
20 be requested to discuss this issue with the Department."

21 So, I think that's pretty clear. One of the
22 things that came up in our meeting was sometimes project
23 managers are more reluctant to have facility meetings and,
24 if that happens, what I was told during that meeting is,
25 move it up line, because if you really have an issue that

1 needs to be clarified before you do your next level of
2 work, you really need to have it clarified. And I even
3 heard Mr. McNeely state that if you had to, you could move
4 it all the way up here, so, he would prefer not, though.

5 MR. MC NEELY: But I'm sure once it gets to Bill
6 Engstrom or KD, the two unit managers, they will have a
7 facility meeting.

8 CHAIRPERSON CLEMENT: Okay. But, you know, this
9 isn't to waste anybody's time, this is to expedite things
10 and to save confusion, and as the SAF moves to the
11 wayside, it is important that people are on the same game
12 plan, so I really appreciate this language. I don't have
13 any comments or changes that I would make to this
14 language.

15 MR. MC NEELY: We will post this language, then.

16 CHAIRPERSON CLEMENT: Does anybody have any
17 further comments or anything?

18 Okay. It's just clarification. It's not really
19 policy, so we don't -- it's not really policy. We don't
20 vote on it. We could vote on it.

21 Okay. The fourth issue or the other issue that
22 we talked about that will be very quick to discuss is the
23 Tier II Risk Screens versus Evaluation, and this was -- we
24 had some missed, I think, actually communication or
25 information about what the real issue was.

1 What the real issue apparently was is sometimes
2 to get the best cost effective remedy, one does a
3 preliminary risk assessment using the Tier II software to
4 determine if the site is going to pass through a risk
5 process or if you are going to have to go to an active
6 remedy.

7 When you do that preliminary risk assessment,
8 some people call that a risk screen, the cost for that
9 preliminary risk assessment has not always been funded by
10 the SAF for the level of effort necessary to do it,
11 because some sites are more complicated and more data
12 needs to be added and the data manipulation itself can
13 take some time, not just the Tier II screen. I think
14 that's really the problem statement that we went through.
15 I don't think there was much more to it than that.

16 The things that we came up with that appeared to
17 be an old issue, it appeared to have been resolved, there
18 is no language called risk screen or risk evaluation in
19 the rule or in the cost schedule or anything.

20 There is the term "risk assessment". Right? So
21 what we decided is not to create any other kind of policy
22 statement or guidance because we didn't want to build
23 language that didn't exist in the program, and that this
24 needs to be handled more on a case-by-case basis. But I
25 think the agency's aware that there could be some sites

1 that require more levels of effort to complete a
2 preliminary risk assessment, which would mean it would
3 cost more.

4 Is that fair.

5 MR. MC NEELY: That sounds fair.

6 CHAIRPERSON CLEMENT: So we're not going to take
7 that any further. There will be no bulletins or anything
8 like that on that one. That's where we ended up with
9 that.

10 Let's see. Then the final issue is really the
11 more significant issue that we talked about. We had a
12 good discussion about the draft language for the rule, and
13 this is just a summary of the things that we talked about.
14 I don't think we really need to go into much depth about
15 that.

16 But the two issues that came up that seemed to be
17 issues that were of concern to the stakeholders that were
18 present. The first one was how do you exit the program.
19 If you applied and you're part of the process and, for
20 whatever reason in the future you decide I don't want to
21 be part of this program anymore, there is a way for the
22 agency to get you out if you don't do certain things, but
23 there is no way for you to get yourself out.

24 So one of the ideas was that we would suggest
25 that there be some exit language in the rule for the

1 owners and operators, stakeholders to get out themselves.

2 Any other -- I mean, let's just talk about that
3 one item itself. If there is anything additional?

4 MR. O'HARA: What was DEQ's position on those two
5 issues?

6 MR. MC NEELY: We have the language in there. If
7 information was inaccurate or misleading, we can actually
8 kick you out of the program, or, I'm not sure, we didn't
9 say fraud or anything like that. Do you have the
10 language? Misleading, inaccurate or --

11 CHAIRPERSON CLEMENT: You've got mechanisms --

12 MR. MC NEELY: That's correct.

13 CHAIRPERSON CLEMENT: -- to kick them out, but
14 there is no mechanism for them to voluntarily get out.

15 MR. MC NEELY: There is no mechanism if the owner
16 or operator wants to say, I don't want to be part of this
17 program anymore. Our position initially was, if they do
18 that, why would they want to do that because they have to
19 pay on their own nickel, or they could do it anyway,
20 because basically they're just getting out of the program.
21 They're getting funded by the MNA, but there is no
22 language to do that, maybe somebody wants to clean up very
23 quickly because they are trying to sell the property, or
24 something like that.

25 So we're going to add in the same areas, it would

1 be like A, if you give us specific information to the
2 Agency, then we can kick you out, or if you want to
3 withdraw on your own, you just add like a couple of extra
4 sentences, and it will be their nickel, really, to do the
5 cleanup after that point.

6 CHAIRPERSON CLEMENT: But there could be cases
7 where there is a property transaction and they want clean
8 closure and they want to get it out of it right away. I
9 don't think it's detrimental to the program.

10 MR. MC NEELY: Personally, I think if the
11 owner/operator wanted to do that, they could do that
12 without pulling out, that way they could still be in the
13 program and monitor their cleanup work.

14 CHAIRPERSON CLEMENT: They will always be in the
15 program.

16 MR. MC NEELY: May not be funded by the program.
17 That's one of the bigger issues.

18 CHAIRPERSON CLEMENT: That's kind of a separate
19 thing, you know.

20 MR. MC NEELY: Okay.

21 CHAIRPERSON CLEMENT: So, do you understand what
22 we're talking about with that? It doesn't make sense,
23 looking at it from our perspective, it's why would anybody
24 want to get out, but there will be times because of
25 property transactions. That's usually what happens.

1 MR. FINDLEY: So, if they opted out, then they
2 would have to sign a statement saying that they assumed
3 all the responsibility for any future cleanup on that
4 property?

5 MR. MC NEELY: We didn't go into the detail, but
6 they have to write a letter asking -- requesting to get
7 out of the program, and then we would probably respond
8 saying, hey, you are out, and we would probably have a
9 letter saying you are out of the program, you are liable
10 for all cleanup.

11 CHAIRPERSON CLEMENT: And then you may want to
12 think about what language you craft in the rule to make
13 this important point, but they're always subject to the
14 program regardless of what aspects of the program they're
15 in.

16 So, you know, you've got an attorney. I don't
17 know what the right way to do that is. It is a good
18 point.

19 MR. MC NEELY: Okay.

20 CHAIRPERSON CLEMENT: And then the second issue,
21 if we're done with that one, was there is actually a
22 robust public participation component of the rule, because
23 basically what your -- some of the aspects anyway -- what
24 you are saying is we're going to leave contamination in
25 place that's above aquifer water quality standards in

1 aquifers in the State of Arizona, which has not really
2 been done much before in the State.

3 And typically where I think this is going to
4 happen is more than often is to where you have commingled
5 coordinated plumes, large municipal areas that are
6 contaminated where little bits and drabs of petroleum
7 contamination are not going to make any difference,
8 frankly, technically on the public policy effective
9 long-term. My two cents on it.

10 But with the public participation components,
11 there was provisions, there was notice to those parties
12 that may have a financial impact from a UST, a LUST
13 closure, and that is the WQARF PRPs, the CERCLA PRPs, the
14 RCRA PRPs, if you've got them, the voluntary parties.

15 This is other cleanup program that we'll still be
16 obligated to clean up these same areas and may have to
17 deal with the remaining petroleum contamination. And I
18 have a couple of those sites that I'm working on and
19 sometimes you get great information from the UST program
20 and the UST project managers and the UST owners and
21 operators, and sometimes you cannot find anything out.

22 So, with that background, it was my suggestion
23 that the public participation notice be expanded to
24 include those parties that would have a major potential
25 obligation, either relative to including that contaminant

1 in their own cleanup or relative to their cost or their
2 analysis that they're going to have to do in the
3 investigation of these building studies. So, anyway, that
4 was the background behind it.

5 Ms. Foster, do you have any comments on that?

6 MS. FOSTER: No. It looks wonderful.

7 CHAIRPERSON CLEMENT: I know that's going to be a
8 little bit more of a problem with the agency, but all of
9 these sites now, either in WQARF and CERCLA, those parties
10 are well identified. Do you know what I mean? They're
11 not unknowns. There is not a lot of research the agency
12 is going to have to do, and typically your public
13 participation notices include the PRPs and the WQARF
14 program and the CERCLA program, so if you can get your
15 lists together, it really shouldn't be that burdensome I
16 don't think.

17 MR. MC NEELY: Yeah, I don't think it will be
18 burdensome. We are adjusting our rule language to put
19 that in. The intent is everyone knows at least that needs
20 to know we are not trying to not notify people.

21 CHAIRPERSON CLEMENT: Does anybody have an
22 opinion or a comment on that? I drafted a --just because
23 it seemed like we had very good consensus at the Technical
24 Subcommittee meeting, I drafted a letter to the Director
25 so that we could move forward with this in a vote today if

1 we felt that it would be appropriate.

2 So, what I would like to propose is that we take
3 each issue separately in this letter, both issues together
4 in this letter, and see if I have a motion to approve the
5 letter to the Director.

6 MR. O'HARA: I move that we approve the letter as
7 written, the recommendations on the Technical
8 Subcommittee.

9 CHAIRPERSON CLEMENT: Is there a second?

10 MS. FOSTER: I will second it.

11 CHAIRPERSON CLEMENT: All in favor?

12 (Chorus of ayes.)

13 CHAIRPERSON CLEMENT: Anyone opposed?

14 Okay. Great. I will get this rule letter out --
15 recommendation letter to the Director this week so he will
16 have that.

17 MR. MC NEELY: I guess you will need a published
18 on.

19 CHAIRPERSON CLEMENT: Yeah, I didn't have a date.
20 I didn't have that actually, that's why.

21 MR. MC NEELY: No. Joe will have to get whatever
22 date.

23 CHAIRPERSON CLEMENT: Oh. We can go all the way
24 back to the original. Oh, January 4th. Thank you. I
25 didn't go all the way back to the original. I just did

1 not have it in my file.

2 Okay. Great. Annual report, No. 7.

3 I drafted an annual report. That's always a sore
4 point with me. I'm sorry you guys. It takes so long to
5 get information from anyone, including the DEQ. So we got
6 it done.

7 I've sent it to -- usually what I do so everybody
8 knows is I take input from the subcommittee chairs. I get
9 input from the DEQ. I draft it. I send it first to the
10 subcommittee chairs and DEQ because I want to make sure
11 that I've incorporated their information properly, and
12 then I do a redraft, and then it goes out to the Policy
13 Commission, so that's the way that it goes.

14 This time, though, just so you know what
15 happened, there was a section that was highlighted in
16 yellow. That was a piece that I had apparently received
17 from Hal Gill sometime ago and not known I had received
18 it. So, I had gone through the process of preliminary
19 review, and then he said, oh, you forgot this paragraph.
20 So, that's why that paragraph was highlighted because
21 neither of the subcommittee chairs nor the DEQ had seen
22 that paragraph before, and I wanted to make sure you knew
23 where it was.

24 So, did everybody have a chance to read and
25 review the annual report? Are there any comments or

1 discussions? Okay.

2 Is there a motion to approve the annual report
3 for submission?

4 MS. FOSTER: I motion that we approve the annual
5 report prepared by the Chair and submit it.

6 CHAIRPERSON CLEMENT: Okay. Is there a second?

7 MR. O'HARA: I will second it.

8 CHAIRPERSON CLEMENT: All in favor?

9 (Chorus of ayes.)

10 CHAIRPERSON CLEMENT: Anyone opposed?

11 MR. MIKITISH: Joseph Mikitish. I'm going to
12 abstain just because I haven't had the background on that
13 particular document.

14 CHAIRPERSON CLEMENT: Passed. It still works.
15 We are getting all our work done today.

16 Okay. Next one is the status of the Policy
17 Commission member appointments with Mr. McNeely.

18 MR. MC NEELY: The status of the Policy
19 Commission Member appointments. You probably received a
20 letter. We have new members that are being appointed.
21 They're not officially members until they actually fill
22 out the paperwork and send it in and take the oath of
23 office.

24 And one will be -- I will list them out. Cathy
25 Chaberski, and that's going to replace Theresa's chair.

1 It was at the request of Theresa that we find someone.
2 Cathy is from Glendale. She used to be the ground field
3 coordinator and the VRP unit manager at DEQ. Now she's
4 environmental -- she does ground field work. She has a
5 couple of USTs. She's in Glendale.

6 MR. FINDLEY: Phil, did you want to spell her
7 last name?

8 MR. MC NEELY: Let me look. I can find it. It's
9 Catherine Chaberski, C-H-A-B-E-R-S-K-I.

10 So that's a new member that will be -- probably
11 the next time we meet will probably be here.

12 The next one is Theresa Kalaghan. That's
13 K-A-L-A-G-H-A-N. She's an environmental consultant.

14 And Hal submitted his resignation if we can find
15 somebody else, so I guess next time Theresa will probably
16 be on the Commission.

17 CHAIRPERSON CLEMENT: Who does she work for?

18 MR. MC NEELY: SECOR, environmental health, and
19 she does Chevron, Arco. Now she has Arco, 7Eleven, and
20 does a lot of environmental consulting, a lot of UST work.

21 Karen Gaylord was moved from the small
22 owner/operator to the environmental attorney position.

23 Bill Bunch from Circle K is replacing Myron Smith
24 for the large owner/operators and Circle K owns about 1100
25 tanks in Arizona, so they own about 15 percent of all the

1 tanks.

2 CHAIRPERSON CLEMENT: Oh, that's a big
3 stakeholder.

4 MR. MC NEELY: 1100 out of 7,600.

5 CHAIRPERSON CLEMENT: 15 percent.

6 MR. MC NEELY: That's a guess.

7 MS. FOSTER: Do they own them or rent them?

8 MR. MC NEELY: They own them now. They bought
9 them from Conoco Phillips, so they actually are an
10 owner/operator, which is good.

11 CHAIRPERSON CLEMENT: Very good.

12 MR. MC NEELY: Then we have one more person, and
13 this is a new name. He's the City Manager of Globe. They
14 have a small -- they have a system. So his name is Manoj
15 Vyas. He's our small owner/operator.

16 CHAIRPERSON CLEMENT: Could you maybe spell that?

17 MR. MC NEELY: Yes. Let me see. M-A-N-O-J,
18 Manoj Vyas, V-Y-A-S. I think he's Swedish or something.
19 But he's the City Manager for the City of Globe and they
20 own a tank and they have a LUST number, so he was very
21 excited about doing that.

22 So, so far those are the new members, and I think
23 Jon and you guys, Gail, did you receive yours?

24 CHAIRPERSON CLEMENT: I did receive it
25 immediately.

1 MR. FINDLEY: I don't think I've received a
2 letter yet.

3 MR. MC NEELY: Did you receive nothing from
4 Arizona?

5 MR. FINDLEY: No.

6 MR. MC NEELY: Okay. I'll check.

7 CHAIRPERSON CLEMENT: I received my letter last
8 Friday, so you should be getting it pretty soon.

9 MR. FINDLEY: It may be.

10 CHAIRPERSON CLEMENT: I was shocked that it
11 turned around given the length of time this has taken.

12 MR. MC NEELY: So, I think the next meeting, we
13 probably should recognize all the members. A lot of them
14 are absent right now, but we should recognize all the good
15 service that Theresa, Hal and Myron --

16 CHAIRPERSON CLEMENT: People have really, really
17 done a lot of work.

18 MR. MC NEELY: Theresa, you've been on since '98,
19 haven't you?

20 MS. FOSTER: A long time.

21 MR. MC NEELY: I think since we started.

22 CHAIRPERSON CLEMENT: This Commission would not
23 function without the quality of the people that have been
24 on it and the willingness to participate and to do work,
25 and I can't tell you all how much that's meant to me in

1 this role.

2 It's going to be a transition, and we are going
3 to miss you guys, but we really appreciate your
4 contribution, and at the next meeting we will decide when
5 the next meeting will be.

6 Could we also get a list, perhaps, and with
7 contact information so that I can build a distribution
8 list and make sure that now we inform these people to when
9 the next meetings going to be and all of that?

10 MR. MC NEELY: Right. And we probably should
11 have -- we probably should talk to them individually to
12 let them know what to expect before they show up.

13 CHAIRPERSON CLEMENT: Yes. Once we decide when
14 our next meeting is, you can call them and I will call
15 them and make them feel welcome and know what's going on.
16 That would be a good idea.

17 But I think that's a step in the right direction
18 because people like Myron hasn't had tanks for a while and
19 it's really not that interesting any more so much.

20 Good. Thank you.

21 MR. MC NEELY: You are welcome.

22 CHAIRPERSON CLEMENT: Any comments or questions
23 beyond that? Okay.

24 I need to do the general call to the public and
25 see if we have any other -- yes, Mr. Vannais.

1 MR. VANNAIS: Leon Vannais. There is a rule
2 package that's going through right now that we commented
3 on sometime last week that might have an impact on the UST
4 program and it deals with Office of Administrative
5 Hearings. The rule change will allow the Department to
6 hold requests for formal appeals and not forward them to
7 the Office of Administrative Hearing if the Department
8 finds that the letter that's being appealed is not an
9 appealable agency action.

10 I think for the SAF program with the SAF rules,
11 it's pretty clear as to what is appealable and what is not
12 and how you appeal that.

13 For the UST Corrective Action Section, the Policy
14 Commission may want to look at reviewing that rule, seeing
15 how it's going to impact the program, what potential
16 documents would not be considered appealable agency
17 actions, whether that would be compliance documents or
18 NOVs, things like that, or if there is other -- is there
19 another world of documents out there that the department
20 considers a nonappealable agency action with the UST
21 program.

22 So we've kind of missed the boat a little bit on
23 this, but it is going through GRRC. The terms have to be
24 responded to, and I think maybe the Policy Commission
25 should at least take a look at this to see if it does have

1 an impact, and that's all I have to say.

2 CHAIRPERSON CLEMENT: Thank you, Mr. Vannais, I
3 appreciate that.

4 Any other general public comments? We can't --
5 as part of the public process, we can't really address
6 public comments unless they're part of the agenda and
7 obviously that wasn't, but we can address them to the
8 point of including them if we think it's appropriate in
9 our next meeting. And I definitely think we should try to
10 get a copy of that rule and take a look at it and see if
11 the Commission would like to do anything formal with it or
12 not. That would be a suggestion I have for the next
13 meeting. It may not be timely, but because I'm not sure
14 when we're going to have the next meeting, but I would
15 make that as a suggestion in the next agenda. Okay.

16 As far as summary of meeting action items, I will
17 send out the letter to the Director regarding our
18 suggestions for the NFA/MNA Rule.

19 ADEQ is going to compile and prepare a list of
20 the new Commission Members, and both ADEQ and I will
21 contact them individually before the next meeting
22 personally and make sure that they are informed about the
23 process and made to feel welcome, et cetera.

24 Those of us who have gotten reappointments, it
25 would be up to us to fill out the paperwork and get that

1 notarized and sent back in before the next meeting,
2 hopefully, so we're officially back on the board.

3 And then, Mr. Findley, if you find that you don't
4 get that paperwork, I would contact Mr. McNeely directly.

5 MR. FINDLEY: I will do that.

6 CHAIRPERSON CLEMENT: Because I've already
7 received mine.

8 Let's see what else we have.

9 I don't recall anything else that we had as a
10 specific action item.

11 Did anybody else capture anything?

12 MR. MC NEELY: Send out the annual report.

13 CHAIRPERSON CLEMENT: Oh, today. Yes, I will
14 send out the annual report.

15 MR. MC NEELY: Do you send that to us and we send
16 it out on behalf of the Commission?

17 CHAIRPERSON CLEMENT: What you all -- because we
18 don't have -- you are our administrative support.

19 I will draft the actual letter. I will make
20 original signatures to each of the legislatures, governor,
21 and all those folks, and send that in an actual physical
22 envelope to you, and I usually send it to Cynthia if
23 that's the right person.

24 MR. MC NEELY: That's right.

25 CHAIRPERSON CLEMENT: And then you take and

1 compile -- I will make sure you have the final draft, and
2 then you guys can compile the attachments and the report
3 as a report, then all you have to do is slap my compiled
4 cover letter on it.

5 MR. MC NEELY: Okay.

6 CHAIRPERSON CLEMENT: And I will get that done
7 before the end of this week, and I will date those letters
8 June 1st, 'cause I will be out of town for several weeks
9 after this so --

10 MR. MC NEELY: And you want the Policy Commission
11 to have a hard copy of all that sent to them?

12 CHAIRPERSON CLEMENT: Usually we do have a hard
13 copy made for everybody for the next meeting.

14 MR. MC NEELY: Okay.

15 CHAIRPERSON CLEMENT: Or you could do it PDF and
16 send it out.

17 Does the Commission have a preference on that?
18 Do you want hard copy or do you care?

19 MS. FOSTER: PDF sounds wonderful.

20 CHAIRPERSON CLEMENT: I definitely want a hard
21 copy, just so -- because I keep a record of those. It's
22 the work -- even though you also have a copy of it, it is
23 just one of those things I will keep in my records.

24 MR. MC NEELY: Okay.

25 CHAIRPERSON CLEMENT: Anything else that we need

1 to cover?

2 Any other agenda items that we need to add that
3 wouldn't naturally come from what we discussed today or
4 that would be new issues for the next time?

5 I am going to be out June -- I'm gone the next
6 June meeting scheduled. I don't want that to hold us up,
7 though, if we need a June meeting. The only time we might
8 need a June meeting is looking at those rules, and I just
9 can't -- I just won't be here. Does anybody --

10 Well, you're out of here. You don't care. Look
11 at your face. You are like, what do I care.

12 Do you have an opinion, Mr. O'Hara?

13 MR. O'HARA: I'm not going to be here also at the
14 same time. It's on June 27th. I will be out of town.

15 CHAIRPERSON CLEMENT: Mr. Findley?

16 This is kind of the core group. If I don't get
17 these folks, then there's probably not a point, you know.

18 MR. FINDLEY: I would be available, but if there
19 is not a need for a meeting, that's fine.

20 CHAIRPERSON CLEMENT: Let's tentatively say that
21 the next meeting is going to be in July. I will try to
22 get a copy of those rules and take a look at them, and if
23 it seems -- what I would suggest is our tentative meeting
24 is July. We will get a copy of those rules sent to
25 Commission Members. If there is some movement from the

1 Commission to move that ahead of July, then we will get
2 another meeting scheduled and hopefully we will have
3 enough Commission Members with continuity to pull the
4 meeting through, because, you know, new people have to get
5 a little bit grounded.

6 MR. FINDLEY: So that's the fourth Wednesday?

7 CHAIRPERSON CLEMENT: It's the 27th, I believe,
8 of June was the original scheduled next meeting. The July
9 meeting, does anybody have that with them?

10 MR. FINDLEY: The fourth would be the 25th.

11 CHAIRPERSON CLEMENT: I think the 25th in July.
12 Yeah. And then the other thing is, I will definitely be
13 looking at a volunteer to take over the chair position of
14 the Commission, so, anyone who's interested of the two of
15 you that aren't going to be here next time, think about
16 it. I've been doing this for three years. I think I've
17 had my time.

18 Anything else we need to cover today, any other
19 comments or questions?

20 Thanks everybody for being here. Appreciate
21 everybody's participation, and that is the end of the May
22 --

23 MR. MIKITISH: Madam Chair, I'm not sure I
24 brought a letter, but I do have a letter from the Attorney
25 General appointing me as the alternate to Ms. Huddleston.

1 So when she's not able to attend, I am officially
2 appointed as her replacement.

3 CHAIRPERSON CLEMENT: Welcome. We're glad you
4 are here. Thank you.

5 We're adjourned.

6 (9:51 a.m.)

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C E R T I F I C A T E

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I HEREBY CERTIFY that the proceedings had
upon the foregoing hearing are contained in the shorthand
record made by me thereof and that the foregoing 41 pages
constitute a full true and correct transcript of said
shorthand record all done to the best of my skill and
ability.

13

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DATED at Phoenix, Arizona, this 23rd day of
May, 2007.

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Deborah J. Worsley Girard
Certified Reporter
Certificate No. 50477

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